

SHELBY COUNTY CHARTER

SHELBY COUNTY, TENNESSEE

SHELBY COUNTY CHARTER

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INTRODUCTION

CREATION OF FIRST SHELBY COUNTY CHARTER COMMISSION

On December 5, 1983 the Honorable William N. Morris, Jr., the Mayor of Shelby County, issued a proclamation creating the Shelby County Charter Commission pursuant to the authority granted to him in T.C.A. Sec. 5-2-201, et seq., which was adopted as Chapter 402 of the Public Acts of 1979, as amended. On that same day, the Board of County Commissioners of Shelby County, Tennessee, approved the appointment of the Shelby County Charter Commission as prescribed by the aforementioned statute.

The following citizens were appointed pursuant to that proclamation and ratifying resolution:

1. Senator Steve Cohen
2. John L. Ryder
3. Herman Morris, Jr.
4. Coby Smith
5. Judge W. Otis Higgs
6. Janet A. Seymour
7. Jerry W. Cobb
8. Ron E. Poe
9. Mayor Tom Hall
10. George F. Higgs
11. Waymon Welch

Shortly after the Charter Commission began its deliberations, Mayor Tom Hall resigned and he was replaced by Mr. Lee Winchester, Jr. The aforementioned Charter Commission held its initial organizational meeting on Monday, December 12, 1983. At that meeting, there were elected as officers: Mr. Herman Morris, Jr., Chairman; Mr. John L. Ryder, Chairman Pro Tempore; and Ms. Janet A. Seymour, Secretary. The Charter Commission completed its work on June 15, 1984, with the submission of the completed constitutional Home Rule Charter to the Shelby County Clerk and the Shelby County Election Commission. From January to June of 1984, the Commission met on the average of once weekly and during the latter stages of the preparation of the Charter, they met five times a week. All meetings of the Commission were open to the public. In addition, public hearings were held by the Commission so that all citizens of Shelby County had an opportunity to participate in the drafting of their own Charter. Additionally, many elected and appointed officials appeared before the Charter Commission on numerous occasions in order to provide input into this work product.

HISTORY OF PREVIOUS COUNTY GOVERNMENT STRUCTURE

This Constitutional Home Rule Charter has been prepared to replace a form of government which was created by the passage of Chapter 260 of the Private Acts of 1974, known as the Shelby County Restructure Act. That Act restructured the Shelby

County Government into a County Mayor/Quarterly County Court form of government from its former composition of a three-member Commission and Quarterly County Court form of government. This three-Commissioner/Quarterly County Court government was established by Chapter 237 of the Private Acts of 1911 and provided for a legislative branch known as the County Court and an executive branch composed of three commissioners; one each of the Department of Workhouses and Turnpike Roads, the Department of County Health and the Department of Purchasing and Finance.

The reader should not confuse this three member Board of Commissioners with the Board of County Commissioners which came into being pursuant to the 1977 change in the constitutional section dealing with the structure of county governments in Tennessee, specifically Article VII, Sec. 1, et seq., of the Tennessee Constitution and the corresponding legislation which implemented this new form of county government, which was adopted as Chapter 934 of the Public Acts of 1978. This constitutional and statutory law changed the name of the County legislative body from the Quarterly County Court to the Board of County Commissioners. Between the years 1974 and the adoption of this Charter, the structure of County Government, its rights, duties, and foundations were conferred by the reading of the aforementioned Restructure Act in conjunction with the applicable provisions of the aforementioned Chapter 934 of the Public Acts of 1978.

AUTHORITY FOR CHARTER FORM OF COUNTY GOVERNMENT

The aforementioned Tennessee constitutional change to the structure of County Government, i.e. Article VII, Sec. 1, et seq., provided that the Legislature could provide for alternative forms of County Government, including the right to charter. Following this authority, the Legislature adopted T.C.A. Sec. 5-1-210, et seq., as Chapter 402 the Public Acts of 1979. This Act sets forth the manner and procedure whereby a county home rule charter form of government could be drafted in Tennessee. Following this legislative authority, Shelby County became the first county in Tennessee to establish a Charter Commission for the purpose of placing a home rule charter on a referendum ballot for the voters of that county to decide to change the existing forms of county government into a charter home rule form of government.

“HOME RULE CHARTER”

The Constitutional Home Rule Charter presented herein sets forth the basic issue of home rule for Shelby County, for it is in the true sense a constitution prepared by the citizens of Shelby County for the operation of Shelby County’s government, providing within it a method for amendment by residents of the County. The Charter will place in the hands of the people of Shelby County the power to effectively operate its government without going to the state legislature in Nashville for changes.

CHARTER HIGHLIGHTS

The Constitutional Home Rule Charter provides for a segregation of the County’s legislative, executive and judicial functions. The heart of the Charter is a strong elected

executive, accountable to all the voters, who has the power to veto ordinances and resolutions, and both the responsibility and the means at hand with which to operate an effective and efficient county government. The Legislature is given broad legislative powers inclusive of the rights to adopt County ordinances and is so constructed as to be truly representative of all the people of Shelby County.

The Charter contains a strong prohibitory section which, among other things, prevents its use in any way to consolidate the governments of Memphis and Shelby County, or to diminish the duties of the elected constitutional officers of Shelby County.

To insure efficient, effective and fair relationships between the County employees and citizens of the County, a civil service merit system and a prohibition against conflicts of interest are provided.

CONCLUSION

It is appropriate that, after over 180 years of existence, the County replace the present structure of County government, as it has evolved, with a totally responsive, responsible and modern structure. The Charter Commission presents a government not only for the 1980's but for the increasingly complex challenges faced by an urban type of county government for the 21st century, with the opportunity for the people of this County to make local county governmental changes in Shelby County, rather than in Nashville.

PREAMBLE

We, the people of Shelby County, Tennessee, in order to perfect the structure and enlarge the powers of our county government, to insure that it is just, orderly, efficient, and fully responsible to the people, and to secure the benefits of home rule and self-government for Shelby County to the fullest extent possible under the Constitution of the State of Tennessee, do adopt this charter as the fundamental law for the government of this county.

ARTICLE I.

POWERS AND FUNCTIONS

Section 1.01. Powers and functions.

The government of Shelby County is vested in a mayor-county commission form of government and shall exercise any power or perform any function which is not denied by the Constitution of the State of Tennessee. It is the intent of this charter that the limitations on the powers of county government shall be strictly construed, and that grants of power to county government shall be liberally construed.

NOTES:

1. Prior government was established by Ch. 237, Pvt. 1911. This provided for a legislative branch known as the county court and an executive branch composed of three commissioners; one each for the department of workhouse and turnpike roads, the department of county health and the department of purchasing and finance. These commissioners constituted the "board of county commissioners," which should not be confused with the present board of county commissioners provided for by Ch. 175, Acts 1979, in response to constitutional amendment. The present board is the successor to the county court.

2. Under the law prior to 1911, the county court served as the legislative branch and its chairman had most of the executive functions of government. Some of these functions were exercised through separate commissions, which were abolished by Ch. 237, Pvt. 1911.

Section 1.02. Private and local affairs.

With regard to private and local affairs, all lawful powers are vested in the mayor and county commission except those powers reserved to the judiciary. This investment of legislative, executive and other powers and duties shall be as full and complete, and the authority to perform or to direct them as broad as it is possible to delegate or confer, it being the intent to invest in the government of Shelby County every authority and power and responsibility for the conduct of the affairs of the government of Shelby County, including the powers to adopt and enforce resolutions and ordinances.

NOTES:

1. According to current interpretations, resolutions of the county commission do not have the force of law. County attorney opinion, February 2, 1981(Ryder). Counties, as agencies of state government, have only those powers specifically delegated by the State. McQuillen, Municipal Corporations, secs. 1.28, 1.46.

Section 1.03. Public corporation powers.

The government described herein shall be a public corporation vested with any and all powers which counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the State of Tennessee and any and all powers and duties of such county which are required or authorized by private acts

effective on the date of ratification of this charter, as fully and completely as though the powers were specifically enumerated herein.

Section 1.04. Public corporation rights.

The government of Shelby County shall be a public corporation, with the right of perpetual succession, capable of suing and being sued, and capable of purchasing, receiving and holding property, real and personal, and of selling, leasing, or disposing of the same to the same extent as other counties.

Section 1.05. Rights reserved to the people.

No provisions of this charter, and no action by any officer or employee of the county acting under its authority, shall infringe upon rights, privileges and powers reserved or guaranteed to individual persons or to the people by the Constitution of the United States of America or the Constitution of the State of Tennessee.

ARTICLE II.

LEGISLATIVE BRANCH

Section 2.01. Legislative powers.

The legislative power of the county is vested in the board of county commissioners of Shelby County, hereinafter called the legislative branch. The legislative power includes all lawful authority to adopt ordinances and resolutions governing the operation of government or regulating the conduct and affairs of the residents of the county, to adopt the county budget, to fix the county tax rate, to make appropriations of county funds for all legal purposes, and to exercise all other authority of a legislative nature which is vested in the county by the Constitution, general statutes, or special, local or private acts of the General Assembly or this charter. The legislative branch may adopt any ordinance or resolution which is not in conflict with the Constitution or general laws of the State of Tennessee, or this charter.

NOTES:

1. Name--Ch. 934, Acts 1978 changed all references to county quarterly court to county legislative body. T.C.A. § 5-5-101 [5-5-101].

2. Name--Ch. 165, Pvt. 1979--changed name to board of county commissioners of Shelby County.

3. Authority--T.C.A. § 5-5-101 provides:

"(a) The county legislative body is established as a basic legislative unit of each county of this state; provided, however, that the provisions of this subsection shall not apply to counties which have heretofore adopted the metropolitan form of government.

"(b) Effective September 1, 1978, except as provided in § 5-5-201 and except in any county organized under the consolidated government provisions of article XI, § 9, the quarterly county court, county council, and any other forms of county legislative bodies are abolished and all legislative powers that remained with such court, council, and other forms of legislative bodies are hereby vested in the county legislative body. The county legislative body is further vested with all legislative powers and duties vested in justices of the peace prior to May 11, 1978.

"(c) References to the quarterly county court, county council or other county legislative body appearing elsewhere in this code shall be deemed references to the county legislative body.

"(d) References to the magistrates, justices of the peace, members or membership of such court, council, or body appearing elsewhere in this code shall be deemed references to the members of the county legislative body."

Section 2.02. Other powers.

A. The legislative branch is vested with all other powers of the county not specifically, or by necessary implication, vested in some other official of the county by the

Constitution or by statute not inconsistent with this charter. In exercising its legislative functions, the legislative branch may employ, subject to budgeting limitations, special counsel, assistants, and other employees. However, neither the legislative branch nor the chairman of the legislative branch shall exercise executive, administrative or judicial powers or perform any functions of the mayor-county commission government delegated or assigned by the terms of this charter to other offices, branches or departments of county government. Whenever any public or private act of the state purports to authorize the county court or county commission or its chairman to perform any administrative or executive act or function, then such act or function shall be performed by the county mayor.

B. The county commission shall provide annually for an independent audit of the accounts and other evidences of financial transactions of the county and of every county office and such special audits as deemed necessary. This audit shall be made by a certified public accountant or by a firm of certified public accountants designated by the board of county commissioners, and no individual auditor or member of an auditing firm so designated shall have any personal financial interest, direct or indirect, in the fiscal affairs of the county or of any of its offices. The designated certified public accountants shall be qualified by training and experience and shall have sufficient staff to perform the audit. No individual certified public accountant or firm of certified public accountants may be employed to perform the audit for more than four successive years.

C. By ordinance, the board of county commissioners shall establish purchasing procedures and/or rules and/or regulations for all purchases, sales and contracts for services through competitive bids or otherwise. Such ordinance may provide that the county mayor may promulgate rules and regulations to administer the purchasing procedures established by ordinance. Provided, however, the purchasing rules and regulations shall not apply to elected county officials or clerks of courts if contrary to state law relative to the purchasing for those elected offices.

D. The board of county commissioners shall have the sole power to grant franchises by ordinance, provided no such franchise shall be granted for a period to exceed 30 years.

E. No sale of real property or any interests therein shall be valid unless approved by the resolution of the board of county commissioners.

F. By resolution or other method provided by law, the board of county commissioners shall have the power to borrow money and to issue bonds and notes and other evidences of indebtedness of the county.

NOTES:

1. Under prior law, the county court consisted of the justices of the peace. In addition, when sitting as the county court, the justices had authority over many matters now assigned to probate court. The probate jurisdiction was removed by Ch. 86, Acts 1870. The justice of the peace jurisdiction was removed to general sessions court by Ch. 123, Pvt. 1941. Members of the county commission retain the power to perform marriages pursuant to T.C.A. § 36-3-301. See T.C.A. § 5-5-101.

2. The chairman of the county court had certain administrative functions under prior law, which are abolished here.

3. See Ch. 486, Pvt. 1917, clerical assistance to county court.

4. The Tennessee court of civil appeals in an opinion handed down on July 25, 1978, in the case of Shelby County v. Leonard Ray Blanton construed the above two sections as follows:

" . . . we hold that the signing of bonds, tax anticipation notes, and bond anticipation notes is an integral part of the legislative function of issuing bonds, and in the absence of a specific provision giving the county mayor authority to sign those instruments that power will not be extended to that official by implication."

Section 2.03. Membership and election.

A. The board of county commissioners of Shelby County shall be the legislative branch of Shelby County government, whose members shall be elected by the people for such terms and from such districts as may from time to time be provided by law.

B. The first board of county commissioners under this charter shall consist of 11 members elected from such districts as provided in section 7.11 of this charter and thereafter as the commission may provide. The number of commissioners shall not be less than nine nor more than 25 and the board of commissioners may alter the number of commissioners and the boundaries of districts only by ordinance, provided that no change shall be made in either the number of commissioners or their districts after January 1 of the year in which elections for the commission are to be held.

C. No person shall be eligible to serve as a member of the board of county commissioners unless having attained the age of 18 and are registered voters in the district from which they seek election on the date they filed their nominating petition and have been residents of the county for one year prior to the election.

D. The board of county commissioners shall adopt its own rules of order and procedure. In all elections to fill positions, the board of county commissioners shall adopt a procedure providing for nominations from the commissioners and the public and a roll call vote of the commission in which each commissioner shall vote for one nominee by name. All persons shall be elected by a majority vote of the commission. If no nominee receives a majority on the first vote, the commission shall hold subsequent votes considering only those nominees receiving more than such number of votes as the commission may determine, with said number determined in advance by resolution.

E. In any election to be filled by the board of county commissioners, if any member of the board of county commissioners accepts the nomination as a candidate for county mayor, sheriff, trustee, register, county clerk, assessor of property, or any other countywide office filled by a vote of the people or the county commission, including but not limited to the office of superintendent of roads, superintendent of schools, circuit court clerk, judge of the court of general sessions or a seat in the General Assembly, such member shall automatically become disqualified to vote to fill that office. Acceptance of a nomination by a member of said body will mean that the nomination was made in the presence of the nominee, and the nominee allows nominations to cease and a roll call begun upon the list of nominees without removing that said name from nomination. If a member's name is placed in nomination, the chairman of the board of county commissioners shall specifically ask that person if they [sic] desire their name to remain in nomination prior to the vote beginning on the list of nominees. If the nominee states "yes," then the nominee shall vacate the seat and take a seat in the

public area of the meeting chambers. If the member is elected, his seat on the board of county commissioners shall be declared immediately vacant.

F. No member of the board of county commissioners shall be eligible to hold any other local, county, state or federal compensated elective office so long as they hold the office of Shelby County Commissioner. If a county commissioner assumes another compensated elected office, the county commissioner shall vacate the county [commission] office within ninety (90) days and the vacancy shall be filled in accordance with Article II, Section 2.11 herein. Provided, however, anyone who currently holds another compensated elected office may run for the county commission so long as, if elected, that person resigns the existing elected office within ninety (90) days of his election as a county commissioner. This amendment shall become effective on August 31, 1994, and shall be applicable to all those commissioners taking office on that date and thereafter.

G. No county mayor nor any member of the board of county commissioners shall be eligible to be elected to, or hold the office of, county mayor or county commissioner for more than two consecutive four-year terms. Provided, however, if an individual is appointed to fill and unfilled term either for mayor or county commissioner, this term shall not be counted as part of the two consecutive elected terms.

(Ord. No. 136, 2-28-1994/8-4-1994; Ref. of 11-8-1994)

NOTES

1. Subsection F--Added pursuant to voter referendum of 8-4-94 (Ord. No. 136, 2-28-94).

2. Subsection G--Added pursuant to voter referendum of 11-8-94.

Editor's note: The Tennessee Supreme Court, on March 29, 2006, in the case of Bailey, et al v County of Shelby, 188 S.W. 3d 539 (Tenn. 2006), held 1) that the term limit provision contained in Section 2.03G of the Shelby County Charter is authorized by T.C.A. § 5-1-210(4) and 2) that T.C.A. § 5-1-210(4) does not violate Art. VII, § 1 of the Tenn. Constitution.

Section 2.04. Commissioner's salary and expense.

A. The board of county commissioners may set their own salary and expense accounts. The compensation allowed any member of the county board of commissioners, whether salary, expense or otherwise, shall not be raised during their term of office, and shall not be increased or decreased for the next term of office after January 1 of the year in which the county commission is to be elected for said next term.

B. Compensation of the chairman of the board of county commissioners shall be determined annually and shall be set prior to the election of the chairman.

Section 2.05. Quorum.

A quorum for the purpose of conducting business shall be a majority of the membership of the board of commissioners.

Section 2.06. Ordinances and resolutions.

A. Generally.

- (1) The legislative branch shall exercise its legislative authority by resolution, ordinance, or emergency ordinance as hereinafter set forth.
- (2) No such ordinance, resolution or emergency ordinance shall be opposed to the general laws of this state and no such resolution, ordinance or emergency ordinance shall interfere with the local affairs of any municipality within the boundary of Shelby County.
- (3) Resolutions, ordinances and emergency ordinances shall be adopted according to the forms and formalities set forth below.
- (4) An ordinance may provide suitable penalties or fines or both for the violation thereof as provided by law.

B. Resolutions. All resolutions shall be adopted upon receiving a majority vote of the membership of the county board of commissioners, except as otherwise required by general law for the issuance of bonds, notes and other evidences of indebtedness of the county, and shall become effective in accordance with section 2.07 of this charter.

C. Ordinances.

- (1) Every ordinance shall be read on three different days in open session of the legislative body before its adoption, and not less than one week shall elapse between first and third readings. Any ordinance not so read shall be null and void. The Shelby County commission has established a procedure to read the caption of an ordinance on the first and second readings and an ordinance in its entirety on the third reading, provided however, for any ordinance that is longer than two typewritten pages, the county commission may adopt a procedure to read a summary of said ordinance in lieu of reading the entire ordinance. Copies of such ordinances shall be available during regular business hours at the office of the county clerk or such other officer as may be designated by law and during sessions in which the ordinance has its second and third readings.
- (2) In all ordinances adopted on third reading under this section, the vote shall be determined by yeas and nays and the names of the members voting for or against an ordinance shall be entered upon the journal.
- (3) All ordinances shall be adopted upon receiving a majority vote of the membership of the County Board of Commissioners, except for ordinances dealing with the following subjects, which shall be adopted on receiving a two-thirds vote of the membership of the board of county commissioners:
 - (a) Any proposal which amends this charter.
 - (b) Any proposal which changes the purchasing procedures of Shelby County government or any agency or authority subject to the county purchasing ordinances.

(c) Any proposal setting the county property tax rate at a rate ten percent or more above the previous year's tax rate.

(d) Any proposal which imposes a fine or imprisonment as punishment for a violation thereof.

(e) Any proposal which increases the salary and/or expenses of the county mayor, board of county commissioners, the school superintendent, county school board members or any other elected officials.

(f) Any proposal which changes the number of county commissioners or their district lines.

(g) Any proposal which grants a franchise as set forth in section 2.02(D).

(h) Any proposal ratifying the contracting of services between the county with various municipalities and agencies pursuant to section 3.03(E).

(4) An ordinance shall not take effect until 15 days after its passage, except in case of an emergency ordinance.

(5) No ordinance making a grant, removal or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility shall ever be passed as an emergency ordinance. No ordinance shall be amended except by a new ordinance.

(6) The county clerk or such other officer as may be designated by law shall number and compile in an ordinance book all ordinances and shall preserve such book in that office.

(7) Ordinances shall be enforced by the chief law enforcement officer of the county unless an ordinance otherwise provides. Persons charged with violation of an ordinance, in whole or in part, shall be tried in the court of general sessions. Any fines or penalties or both, and court costs collected for such violation, shall be paid into the county general fund unless the ordinance or state law otherwise provides.

D. Emergency ordinances.

(1) An emergency ordinance may become effective upon the date of its final passage, provided it shall contain the statement that an emergency exists and shall specify with distinctness the facts and reasons constituting such an emergency.

(2) The unanimous vote of all members of the legislative body present shall be required to pass an emergency ordinance. However, at least two-thirds of the legally constituted body must be present and voting.

(3) An emergency ordinance shall be so designated in its caption and shall be published in a newspaper of general circulation prior to its second reading.

E. Caption, subjects. No ordinance or resolution shall become effective which embraces more than one subject, the subject to be expressed in the title. All

ordinances and resolutions which repeal, revise or amend former ordinances or resolutions or acts of the county shall recite in their caption the title or substance of the ordinance or resolution or act repealed, revised or amended.

F. Delivery of copies.

(1) It shall be the duty of the county clerk or such other officer as may be designated by law to deliver to the county mayor a true and attested copy of all ordinances or resolutions within four days of the final passage.

(2) Within 30 days of final passage, the county clerk or such other officer as may be designated by law shall cause to be delivered to the county attorney a certified copy of every ordinance or resolution.

(3) The county clerk or such other officer as may be designated by law shall maintain an up-to-date record of all ordinances and resolutions and furnish a true copy to interested persons for a reasonable fee.

(Ord. No. 29, § 1, 7-11-88)

NOTES:

1. See Note 1 to section 1.02; Davidson County v. Kirkpatrick, 150 Tenn. 546, 266 S.W. 107 (1924).

2. Part of paragraph F(1) was derived originally from Ch. 199, Pvt. 1976, amended by Ch. 243, Pvt. 1980, to change county clerk to clerk of legislative body.

Section 2.07. Mayor signature and veto.

A. Every ordinance and resolution except emergency ordinances of the board [of] county commissioners shall be submitted to the county mayor. If the county mayor signs it, the ordinance or resolution shall become effective as provided in section 2.06 of the charter or at a later date if the ordinance or resolution so provides.

B. If the county mayor vetoes the ordinance or resolution, it shall be returned to the board of county commissioners for action on the veto. A resolution or ordinance shall become effective upon receiving a vote of at least a majority plus one, except in the case of ordinances requiring a two-thirds vote pursuant to section 2.06(C)(3), which shall require a vote of two-thirds of the board of county commissioners. Such passage must take place within 30 days of receiving the county mayor's message of veto.

C. If the county mayor fails either to sign or veto an ordinance or resolution and to report this action to the board of county commissioners within ten days after the ordinance or resolution is submitted to him, the mayor shall have no further power to veto the ordinance or resolution and it shall become effective without the signature upon the expiration of the ten-day period or at a later date if the ordinance or resolution so provides.

Section 2.08. Election of chairman, chairman pro tempore.

The board of county commissioners, at its first session on or after September 1, 1986, and annually thereafter, shall elect from its membership a chairman, chairman pro tempore, and such other officers as deemed necessary. The election procedures shall follow those established pursuant to section 2.03(D), except that this shall not be an election in which the public can make nominations.

Section 2.09. Removal of commissioner.

A commissioner may be removed from office according to state law.

Section 2.10. Chairman's designee authority.

The chairman shall have the right to serve individually or to appoint from the other commissioners and assistants of the board of county commissioners, in writing, a designee, to serve in place and stead of the chairman on any board or commission of which the chairman is a member by law and said designee shall have all powers, including the power to vote, as are conferred upon the chairman. Any designee appointed by the chairman under the provisions of this subsection [sic] shall be appointed to serve in that capacity for at least one year, or the remainder of the term of office of the chairman, whichever is less. During such periods of appointments, either the specified designee or the chairman may exercise the voting powers granted by this subsection. However, at any meeting attended by the chairman, only the chairman shall exercise the voting power.

Section 2.11. Vacancy.

In the event of a vacancy in the office of commissioner, the remaining commissioners shall fill said vacancy with a person meeting the qualifications for said position, who shall hold office until the next general election or special election conducted in the commission district. The person elected in such election shall serve the remainder of the unexpired term.

Section 2.12. Approval of nominations.

All nominations by the mayor for any board, commission, agency, authority, chief administrative officer, county attorney, public defender, or divorce referee shall be subject to the approval and consent by resolution of the board of county commissioners.

Section 2.13. Recodifications.

The legislative branch shall, at least once every five years, cause to be prepared a recodification of all ordinances which are continued in force, together with this charter

and all amendments thereto. The recodification shall be reproduced in pamphlet or book form and shall be made available to any person desiring a copy for which a reasonable fee shall be charged. Fees may be charged for annual revisions. After adoption of the Code, each ordinance of general application shall be adopted as a numbered section or sections of the Code. All new ordinances shall be published annually as an appendix to the Code.

NOTES:

1. This is the authority for this volume. See Note 1 to sec. 1.02.

ARTICLE III.

EXECUTIVE BRANCH

Section 3.01. Executive and administrative powers.

The executive and administrative powers of the Shelby County government shall be vested in and exercised by the county mayor, also called the executive branch, and, under the mayor's control and direction, by such subordinate major divisions, departments, boards, offices, officers and agencies as established from time to time.

NOTES:

1. Prior executive power rested with the board of county commissioners, Ch. 237, Pvt. 1911. That board was not a legislative body. See Note 1 to sec. 1.01.

2. The Court of Appeals in the case of Shelby County v. Leonard Ray Blanton held in an opinion of July 25, 1978, "that the selection of a county depository is an administrative function and that the county mayor is the person authorized to select the depository." However, the mayor must follow the provisions of Chapter 481, Private Acts of 1917 except where the act mentions the county court or its chairman; in those sections the mayor is to be inserted.

Section 3.02. Executive branch.

The county mayor shall be the head of the executive branch of Shelby County government, responsible for the exercising of all executive and administrative functions of the county government and shall be the chief fiscal officer of the county. He shall devote his full time to the performance of his duties as county mayor.

Section 3.03. County mayor duties.

The county mayor shall:

A. See that all resolutions and ordinances of the board of county commissioners and all laws of the state subject to enforcement by them or by officers who are subject, under this charter, to their direction and supervision are faithfully executed; provided, however, the county mayor shall not assume any of the constitutional or statutory duties of the sheriff.

B. Prepare and submit to the board of county commissioners with the assistance of appropriate department heads and other responsible officials the budgets and financial reports. The county mayor shall present the consolidated budget of the county to the board of county commissioners in April in order for the board of county commissioners either to approve said budget as presented or to modify and amend the same as may be deemed requisite in order to determine the amount of taxes necessary to be levied. The adoption of the budget shall be by resolution.

C. Examine regularly the accounts, records and operations of every department, office and agency of the Shelby County government; make regular reports

to the board of county commissioners on the affairs of the Shelby County government; keep the board of county commissioners fully advised on the financial condition and future needs of the Shelby County government; and make such recommendations on Shelby County government affairs as he deems appropriate.

D. Take such other executive and administrative actions as are required by this charter or may be prescribed by the board of county commissioners.

E. Have power to contract with the various municipalities and agencies in the county for the consolidation of duplicating and overlapping services and functions, upon concurrence by the board of county commissioners by ordinance. To this end, the mayor may contract with any city, town, or agency to have such overlapping or duplicated services performed by the county or by any such city, town or agency, or by some office to be administered jointly by the contracting units. The mayor may also contract with one or more neighboring states or counties, or both, for jointly conducting an institution or other service which may be rendered more efficiently or economically, or both, through a centralized institution, enlarged personnel, improved facilities, etc. serving more than one contracting unit.

F. Provide for and maintain all accounting systems necessary for the Shelby County government and for each department, office and agency thereof. The mayor shall maintain such systems in accordance with generally accepted accounting principles applicable to governmental entities, keeping accounting records for and exercising financial and budgeting control over such department, office or agency. All warrants in payment of obligations of the county government shall be signed by an officer as may be designated by law and countersigned by the county mayor, either in person or by facsimile.

G. Have a veto power over the annual budgets of the county which may be exercised by vetoing specific items or parts of items without invalidating the whole. The veto shall be exercised and may be overridden by the same procedure as provided in section 2.07. Provided, however, the mayor shall not have line item veto over the budgets of the elected county officials and clerks of courts.

H. Nominate members of all boards, authorities and commissions, and their appointment shall be subject to approval by resolution of the board of county commissioners. All such appointees shall be residents of Shelby County at the time of their appointment and at all times while serving on said board, authority or commission. The mayor shall submit any such nomination within 60 days of the vacancy to be filled.

I. (1) Have the authority to remove and discharge the members appointed in paragraph (H) above for good cause shown, subject to the approval by resolution of the board of county commissioners of Shelby County.

(2) In addition, the chairman of the board of county commissioners of Shelby County is hereby empowered to commence said removal procedures if the county mayor shall fail or refuse to act within ten days after written demand by the chairman. Any removal proceeding commenced by the chairman of the board of county commissioners of Shelby County shall be subject to the veto procedures contained herein.

J. Have the right to serve individually or to appoint from the administrative assistants, executive assistants or any head of any division or department of county government, in writing, a designee, to serve in place and stead of the mayor on any board or commission of which the county mayor is a member by law, and said designee

shall have all powers including the power to vote as are conferred upon the county mayor. Any designee appointed by the county mayor under the provisions of this section shall be appointed to serve in that capacity for at least one year, or the remainder of the term of office of the county mayor, whichever is less. During such periods of appointments, either the specified designee or the county mayor may exercise the voting powers granted by this section. However, at any meeting attended by the mayor, only the mayor shall exercise the voting power.

K. Negotiate and execute loans, bonds, notes and other evidences of indebtedness to the extent provided in the resolution authorizing the same, and direct the investment of funds.

L. Maintain the records of county indebtedness and have charge of the payment of principal and interest thereon.

M. Examine all contracts, orders and other documents by which financial obligations are incurred by the county or any of its officials or offices, indicate the availability of funds to meet these obligations, and certify thereto.

N. Except for contracts that are in the nature of franchises, have the sole power and authority to enter into contracts on behalf of Shelby County, except as otherwise provided in this charter, and subject to budgetary limitations. Contracts and purchases on behalf of the Shelby County government shall be entered into by the county mayor or the mayor's designee. On all contracts in an amount greater than \$50,000.00 or a greater amount as established in advance by the county commission, the mayor shall obtain the approval of the county commission prior to execution.

Section 3.04. County mayor--Term, qualifications, compensation.

The county mayor shall be elected each four years, commencing with the August 1986 general election, and shall take office on September 1 following his election. He shall be 18 years of age or older, a resident of Shelby County at least one year prior to filing for this office at the time of his election and during his term of office. The county mayor's salary shall be set by the county commission. The salary of the county mayor may be changed from time to time by ordinance of the county commission; provided, however, that no change in salary shall take place during the term for which the county mayor was elected or after January 1 of the year in which the mayor is to be elected.

NOTES:

1. Pursuant to Ord. No. 54, adopted on October 2, 1989, the mayor's salary for the period of September 1, 1990 through August 31, 1994, is \$96,513.33, with an annual expense allowance of \$10,000.00.

Section 3.05. County mayor--Vacancy.

If a vacancy occurs in the office of county mayor by death, resignation, removal, or disability, or otherwise, the vacancy shall be filled by the chief administrative officer until the next countywide election; provided, should the next countywide election following the vacancy be scheduled less than 45 or more than 90 days from the date of the vacancy, then the board of county commissioners shall call a special election to be held not more than 90 days after the vacancy occurs. The person elected in such special election shall take office upon certification of the results of such election and taking the

oath of such office. If the chief administrative officer is unable to serve, the chairman of the board of county commissioners shall serve as acting mayor until a new mayor takes office. While serving as acting mayor, he shall not exercise the powers of his office as commissioner or chairman.

Section 3.06. Creation of offices, division, departments.

A. There is hereby established the office of chief administrative officer, who shall serve directly under the county mayor. The chief administrative officer shall be appointed by the mayor, subject to the concurrence by resolution of the board of county commissioners, and shall be subject to dismissal by the mayor without cause.

B. The county mayor, subject to approval by resolution of the board of county commissioners, may create or abolish major divisions of county government with each division having a division director. The chief administrative officer, the division directors of the county, the county attorney, the public defender, and the divorce referee shall be appointed by the county mayor, subject to approval by resolution of the board of county commissioners, and shall be subject to dismissal by the mayor without cause, and shall be residents of Shelby County at the time they assume the duties of their office and at all other times while serving the county in such capacity.

C. Any function or duty may be assigned or reassigned by the county mayor to a major division of county government, except that the county mayor acting alone shall have the power to veto ordinances and resolutions of the board of county commissioners as set forth hereinbefore and the power to remove without cause the chief administrative officer, division directors, the county attorney, the public defender and the divorce referee.

D. The duties, powers and functions of the departments within the divisions of the Shelby County government shall be generally as set by ordinance, and their jurisdiction shall extend throughout the Shelby County government.

NOTES:

Some former changes in titles are as follows:

1. Division of public works, fire and corrections deleted and replaced by division of public works. Ch. 112., Pvt. 1979.
2. Director of the division of fire and corrections added by Ch. 112, Pvt. 1979.
3. Administrator of finance changed to comptroller wherever it appears in this Act. Pursuant to Ch. 37, Pvt. 1979.
4. Division heads changed from "director" to "administrator" by Ch. 92, Pvt. 1977.

Section 3.07. Budget procedures.

A. The head of each county department shall furnish to the county mayor in a form specified by the mayor:

- (1) Estimates of the revenues and expenditures of the office for the ensuing fiscal year,

(2) Estimates of the costs of any capital improvements pending or proposed to be undertaken (1) within the ensuing fiscal year and (2) within the four fiscal years immediately thereafter, and

(3) Such other information as the county mayor requests.

B. All elected county officials and clerks of courts shall submit their budgets to the county commission, which shall provide a copy of each to the county mayor for the purpose of that office submitting a consolidated budget; provided, however, none of the aforementioned subparagraphs (1) through (3) of 3.07 A shall be applicable to this submission.

C. All offices which receive appropriations from the county government shall adhere to the budget as finally approved, both in total and in line item detail, except that the county mayor shall have authority to approve transfers between line items within the total amount of each category of personnel and operation-maintenance as set forth in the approved budget for any such office, division or department of county government. However, the board of county commissioners, in the appropriation resolution may authorize the county mayor to approve transfers from line items in personnel categories to operation-maintenance categories and vice versa, for any such office, division, or for any department of county government. Requests for such variations shall be submitted to the board of county commissioners by the county mayor; provided however, all such variations submitted by elected county officials shall be automatically submitted to the board of county commissioners by the county mayor. At any time, upon written request of the county mayor, the board of county commissioners may transfer part or all of any unencumbered appropriation balance from one division or department to another. The revenues and expenditures of each division shall be credited and charged to each specific division or department to establish a net revenue or net expenditure for said division or department. The board of county commissioners shall establish line items and appropriate on a net expenditure basis. Capital appropriations shall not be varied except with the approval of the board [of] county commissioners. No transfer shall be made from appropriation for debt service, and no appropriation may be reduced below any amount required by law to be appropriated.

Section 3.08. Special offices of Shelby County government.

A. *Legal department--County attorney, selection, qualifications, authority, duties and powers.*

(1) There is hereby created the legal department of the Shelby County government. The county attorney shall be appointed by the county mayor with the concurrence of a resolution of the board of county commissioners. The county attorney shall, at the time of that appointment, be a citizen of the United States, have had no less than five years experience in the practice of law, and shall be licensed and qualified to practice law in all courts of Shelby County. The county attorney shall be subject to dismissal by the county mayor without cause. The county attorney shall devote full time to the performance of his duties.

(2) The county attorney shall act as chief counsel to the Shelby County government, and he shall act as legal advisor to the county mayor, the county commission, and to all departments, officers and officials of the Shelby County government and shall perform such other duties as may [be] required.

B. *Public defender.* The public defender shall be appointed by the county mayor with a concurrence of a majority of the board of county commissioners. The public defender shall serve for a period of one year from the date of that appointment or until a successor is appointed. The public defender shall, at the time of his appointment, be a citizen of the United States, have had no less than five years experience in the practice of law, and shall be licensed and qualified to practice law in all courts of Shelby County.

C. *Divorce referee.*

(1) The divorce referee shall be appointed by the county mayor with a concurrence of a majority of the board of county commissioners, and shall serve for a period of one year from the date of that appointment or until a successor is appointed. The divorce referee shall, at the time of his appointment, be a citizen of the United States, have had no less than five years experience in the practice of law and shall be licensed and qualified to practice law in all courts of Shelby County.

(2) When a vacancy occurs in the office of divorce referee, the judges of circuit and chancery courts and other courts exercising divorce jurisdiction may submit names of qualified persons to the mayor for consideration.

NOTES:

1. County attorney. Originally created by Ch. 2, Pvt. 1937, as amended by Ch. 116, Pvt. 1955; Ch. 294, Pvt. 1975. Restructure Act supersedes this. Special counsel authorized by Ch. 294, Pvt. 1975. Assistants authorized by Ch. 214, Pvt. 1959.

2. Public defender. Originally authorized by Ch. 69, Pvt. 1917. See Public Officers.

3. Divorce referee. Prior office of divorce proctor authorized by Ch. 121, Pvt. 1915; later amended by Ch. 161, Pvt. 1973. See Public Officers.

ARTICLE IV.

JUDICIAL BRANCH, LAW ENFORCEMENT AND CORRECTIONS

Section 4.01. Judiciary.

A. The judiciary of Shelby County government shall be vested in the existing courts of Shelby County or any other courts established by law. Judges of the various courts of Shelby County shall expressly continue as elective officers with all the powers and duties conferred or implied by law upon such office of judge of the various courts.

B. However, the board of county commissioners may, by ordinance, create such additional divisions of general sessions court which it deems necessary. Such additional divisions may be given the exclusive jurisdiction over county ordinance violations, and such other jurisdiction as provided by the laws of the State of Tennessee.

Section 4.02. Vacancy.

If a vacancy occurs in any judicial office of the general sessions, probate, juvenile courts or any other county judicial office established by law in Shelby County, then that vacancy shall be filled by a vote of the board of county commissioners as prescribed in this charter, and the person so selected shall serve until his successor is elected and qualified as prescribed by law.

Section 4.03. Abolishing divisions or altering compensation prohibited.

Nothing herein shall grant to the board of county commissioners the power to abolish a division of any general sessions, probate or juvenile court or any other county judicial office of Shelby County during the term of office of a judge of that court, nor shall there be the power to alter the compensation of any judge of any court of Shelby County during that term of office. The board of county commissioners shall not abolish any division or alter the compensation of any judge for a subsequent term of any court of Shelby County after the first day of January of the year in which an election shall be held or in the year in which a vacancy shall be filled.

Section 4.04. Rules of court and evidence.

Nothing herein contained shall confer upon the board of county commissioners the power to make rules of court, rules of evidence, or otherwise affect the rules of civil or criminal procedure of the courts of Shelby County. The power to make rules of court or rules of evidence shall be expressly reserved to the respective courts of Shelby County, and/or to the supreme court of the State of Tennessee, and the Tennessee legislature as applicable and provided by law.

Section 4.05. Judicial notice of charter and ordinances.

A Code or other volume or volumes containing this charter and ordinances of Shelby County published by authority of the board of county commissioners shall be prima facie

evidence in all courts of the authenticity of such ordinances. All courts of Shelby County shall take judicial notice of county ordinances.

Section 4.06. Sheriff.

The sheriff shall be the chief law enforcement officer of the county and is charged with the enforcement of ordinances of the County of Shelby. The sheriff shall be elected by the qualified voters of Shelby County according to law and all duties, conferred or implied by law, shall expressly continue as they existed prior to the enactment of this charter.

State law references: Duties, T.C.A. § 8-8-201.

ARTICLE V.

GENERAL PROVISIONS

Section 5.01. Title of charter.

This charter shall be known and may be cited as "The Shelby County Charter."

Section 5.02. Liberal construction of charter.

The failure to mention a particular power or to enumerate similar powers in this charter shall not be construed to exclude such powers or to restrict the authority that the county would have if the particular power were not mentioned or the similar powers not enumerated. The charter shall be liberally construed to the end that, within the limits imposed by the charter and by the Constitution and the laws of the state, the county shall have all powers necessary and convenient for the conduct of its affairs, including all powers that counties may assume under the Constitution and laws of the state concerning county home rule.

Section 5.03. Definitions.

The following definitions shall be applicable:

A. The word "ordinance" when used in connection with any action taken by the board of county commissioners shall mean any local legislation adopted by that body which is adopted according to the formalities as set forth in this charter and is of countywide concern in a permanent nature in its effect, whether in a governmental or proprietary nature, including, but not limited to, all types of former actions ratified by the board of county commissioners in the nature of private acts.

B. The word "resolution" shall mean any measure adopted by the board of county commissioners which is not an ordinance, requiring a majority vote for passage unless otherwise required by law for the issuance of bonds, notes or other evidence of indebtedness of the county and dealing in matters of a temporary or special nature, generally involving administrative matters.

C. The word "shall" shall be construed as mandatory and the word "may" shall be construed as permissive.

D. The word "person" shall include the words, "individual," "corporation," "partnership" and "association," unless such a construction would be unreasonable.

E. The phrase "two-thirds of the members of the commission" shall mean at least two-thirds of all members and, in the case of an 11-member commission, shall mean eight members.

Section 5.04. Construction of words in charter.

For the purpose of this charter, all masculine pronouns used herein shall also mean the feminine of said pronouns; the singular shall also include the plural, and the word "person" shall mean both male and female, plural and singular, partnerships, firms, associations and corporations.

Section 5.05. Amendments to the charter.

The charter may be amended as follows:

A. In the manner provided by law for the framing, proposal and submission of new charters, a charter commission may frame and propose amendments to this charter and shall submit any such amendment to the voters of the county.

B. The board of county commissioners may frame and by a two-thirds vote of the board of county commissioners propose amendments to this charter. Except as otherwise provided in this subsection, every ordinance proposing a charter amendment shall be introduced in the form and manner, and governed by the procedure and requirements, prescribed for ordinances generally. Every such ordinance shall contain after the enacting clause the following, and no other matter: (1) A statement that the charter amendment set out in the ordinance is proposed for submission to the voters of the county in accordance with the requirements of this charter, and (2) the full text of the proposed charter amendment. Such an ordinance shall become effective upon adoption; and its effect shall be to require that the clerk of the board of county commissioners immediately deliver a certified copy of the ordinance to the county election commission and that the election commission submit the proposed charter amendment therein contained to the voters of the county as provided below.

C. Voters of the county may frame and proposed amendments to this charter. They may propose any such amendment by a petition addressed to the board of county commissioners and containing the full text of the proposed amendment. Any petition proposing a charter amendment must be filed with the clerk of the board of county commissioners and must be signed by qualified voters of the county equal in number to at least 15 percent of the persons who voted in the last gubernatorial election in Shelby County. The clerk shall immediately deliver it to the county election commission. When such petitions have been determined sufficient, the county election commission shall submit same to the voters of the county in accordance with this section.

Editor's note: The Charter, § 5.05C., which states "at least 15 percent of the persons who voted in the last gubernatorial election" is superseded by the state law, T.C.A. § 2-5-151(d) which states "at least fifteen percent (15%) of those registered to vote in the ...county."

D. The county election commission shall submit to the voters of the county any charter amendment proposed and delivered to them in accordance with the provisions of this section. They shall submit any such amendment to the voters at the next regular county election if one occurs not less than 60 and not more than 120 days following the delivery to such authorities of the ordinance or petition proposing the amendment. Not less than three weeks before any election at which a proposed charter amendment is to be voted on, the election authorities shall publish a notice in a daily newspaper of general circulation. The form of the ballot for submission of proposed charter

amendments shall be governed by state law concerning referendum elections. If a majority of the voters of the county voting upon a proposed charter amendment votes in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters of the county. Any charter amendment shall be published promptly after its adoption in the manner provided in this charter for adopted ordinances.

Editor's note: The Charter, § 5.05D, which states "at the next county election if one occurs not less than 60 and not more than 120 days" is superseded by the state law, T.C.A. § 2-5-151(f)(2) which states "a petition for recall, referendum or initiative shall be filed at least sixty (60) days before a general municipal or county election may be held on the question contained in such petition. The question contained in a petition filed less than sixty (60) days before an upcoming general municipal or county election will be placed on the ballot of the following general municipal or county election." In addition, the Charter, § 5.05D., which states "Not less than three weeks before any election at which a proposed charter amendment is to be voted on, the election authorities shall publish a notice in a daily newspaper of general circulation." is superseded by T.C.A. § 2-12-111(b) which requires publication of "notice of elections on questions not less than twenty (20) days nor more than thirty (30) days before the day of the election."

Section 5.06. Method of electing officers.

Elective officers shall be nominated and elected in the manner provided in the election laws for the nomination and election of state and county officers, except as modified by this charter in regard to the filling of vacancies.

Section 5.07. Qualification and oath of elected officers.

Before entering upon their duties, every officer whose election of [or] appointment is prescribed by this charter shall meet all qualifications provided by this charter and applicable state law and shall take and subscribe to the following oath or affirmation before a person authorized to administer oaths:

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, the Constitution of the State of Tennessee, and the charter of the County of Shelby, and that I will faithfully discharge the duties of my office to the best of my ability.

Any person refusing to take the oath or affirmation shall forfeit that office immediately.

Section 5.08. Conflict of interest.

A. No officer or employee of the county, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits of [or] emoluments of any contract, job, work or service for the county. No such officer or employee shall accept any service or item of value, directly or indirectly, from any person, firm or corporation having dealings with the county, upon more favorable terms than those granted to the public generally; nor shall there be received, directly or indirectly, any part of any fee, commission or other compensation paid by or payable to

the county, or by any person in connection with any dealings with the county, or by any person in connection with any dealings with or proceedings before any office, officer, department, board, commission or other agency of the county. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for county officers, employees or persons or firms doing business with the county guaranteeing the performance of any contract with the county. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of that person's public work, provided, however, that the head of any department or board or commission of the county may permit an employee to receive publicly [sic] offered and paid for the accomplishment of a particular task.

B. The provisions of this article shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law, this charter or ordinance.

C. Any officer or employee of the county who willfully conceals any such interest or violates any of the provisions of this section shall forfeit his or her office. Any contract made in violation of this article may be declared void by the county mayor or by resolution of the board of county commissioners.

D. The board of county commissioners may enact ordinances to guard against injustices and to supplement the provisions and extend prohibitions against conflicts of interest not inconsistent herewith.

Section 5.09. Bonding of officers or employees.

The mayor and such other county officers or employees as the board of county commissioners may provide shall give bond in the amount and in the form of surety prescribed by the board of county commissioners. The premiums on such bonds shall be paid by the county.

Section 5.10. Residence of county official, employees and attorney qualifications required.

A. Any county official who shall voluntarily remove his or her residence outside the election district from which elected or appointed shall forfeit that office immediately.

B. Any lawyer appointed and employed by the county in a legal capacity, who is suspended or barred from the practice of law in the State of Tennessee, shall forfeit that office immediately.

C. All employees must be residents of Shelby County at the time of appointment and shall continue to reside in said County as a condition of their employment, provided, however, this provision shall not apply to any employee working for Shelby County government on the effective date of this charter.

Section 5.11. Temporary advisory board.

The board of county commissioners or the mayor may appoint for designated periods one or more temporary advisory boards of citizens of the county who shall, without compensation other than necessary expenses as may be provided in the budget, assist in the consideration of county administration policies and programs. It shall be the duty of each such advisory board to study conditions in its respective field, with particular reference to the policies and programs in Shelby County, and to report its findings and recommendations to the board of county commissioners or the mayor, as appropriate.

Section 5.12. Ex officio members--Boards, authorities, commissions.

No county officer or employee who is compensated for his service by salary shall receive any additional salary for serving as an ex officio member of a county board, commission or agency.

Section 5.13. Equal opportunity.

A. The board of county commissioners and the county mayor shall take all actions necessary to assure the continued implementation of all rules, regulations and guidelines promulgated by the Equal Opportunity Commission, the Department of Labor, or other such competent authority that are applicable to insuring fair employment practices. The administrator of the appropriate office of the board of county commissioners designated to carry out this function shall be elected by the board of county commissioners pursuant to section 2.03(D) and (E) and shall be subject to termination by resolution of the board of county commissioners.

B. The duties of this administrator shall include all those established by resolution and shall include, but not be limited to, the following:

- (1) Review and implementation of fair employment practices, as specified by Equal Employment Opportunity Commission guidelines, in all departments of county government;
- (2) Update and monitor an effective affirmative action program;
- (3) Investigate claims and complaints of discriminatory practices arising in county government departments;
- (4) Design, implement and monitor programs to increase minority business participation in the letting of county contracts;
- (5) Review all proposed contracts in which county funds are expended to insure that nondiscriminatory employment practices are being executed on all levels of employment as specified by Equal Employment Opportunity Commission and Labor Department regulations;
- (6) The administrator shall have the power to require each firm or business contracting with the county to submit with their proposals and/or bid statistics revealing the percentage and number of minorities at all levels of said firm or business;

- (7) Such other duties as may be required by the board of county commissioners.

Section 5.14. Pension benefits retained.

Notwithstanding the enactment of this charter, officers and employees who are members or beneficiaries of an existing pension or retirement system, or beneficiaries or prospective beneficiaries of an existing retirement system, or retirement fund, shall continue to have the rights, privileges, obligations and status with respect to the said system or fund as is now or hereafter prescribed by law.

Section 5.15. Liability and void obligation if contrary to charter.

A. Except as otherwise provided in this charter, every obligation incurred and every authorization of payment in violation of the provisions of this charter are void. Every payment made in violation of the provisions of this charter is illegal, and all county officials who authorize or make such payment or any part thereof are jointly and severally liable to the county for the full amount so paid or received. If any county official makes any payment or incurs any obligation or takes part therein in violation of the provisions of this charter, that action shall be cause for his discharge from employment.

B. Nothing contained in this charter is intended to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partially by the issuance of bonds, nor shall it prevent the making when permitted by law of a contract or lease providing for payment of funds at a time beyond the end of the fiscal year in which the contract or lease is made. But any contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by resolution.

Section 5.16. Public meetings and records.

A. *Open meetings.* In accordance with Tennessee law, all official meetings of boards, commissions and authorities shall be public.

B. *Public records.* In accordance with Tennessee law, all county records shall be public documents and shall be open for inspection.

Section 5.17. Administrative rules and regulations.

The head of any department, office or agency may, except as otherwise provided by law and subject to the approval of the county mayor, make rules and regulations for the conduct of that department, office or agency and to carry out its powers and duties.

Section 5.18. County seal and flag.

The board of county commissioners shall have the power to adopt an official seal and flag for the county.

Section 5.19. Service of process on county.

Service of any legal process, notice, or other matter to be served upon the county pursuant to any rule, regulation or law shall be made upon the county mayor or any other official allowed by law.

Section 5.20. Duty to provide health service and to require payment from those able to pay.

A. The county may acquire, construct, equip, extend, repair, maintain and manage, or contract for management, and operate, or cause to be operated through contract, hospitals, sanitariums, and clinics owned, supported or controlled by the county. The board of county commissioners may enact ordinances under which patients who are able to do so pay in whole or in part for their care and treatment.

B. The county may act through an authority established by county government to accomplish or carry out any or all of the above outlined duties.

Section 5.21. Severability.

If any article, section or provision of this charter shall be held unconstitutional, invalid or inapplicable to any persons or circumstances, then it is intended and declared by the people of the county that all other articles, sections or provisions of this charter and their application to all other persons and circumstances shall be severable and shall not be affected by any such decision.

ARTICLE VI.

PROHIBITIONS

Notwithstanding any provision of this charter to the contrary, the following prohibitions shall be established and shall be liberally construed to give them full force and effect.

Section 6.01. Consolidation prohibited.

No provision of this charter shall be used or construed in any fashion to establish or to serve as a basis for establishing a consolidated form of government.

Section 6.02. County board of education.

A. The provisions of this charter shall not apply to county school funds or to the county board of education, or the county superintendent of education for any purpose:

(1) Except that all such employees and officials shall be residents of Shelby County as a condition for employment or service as applicable; provided, any employee or official employed as of the effective date of this charter shall not have to comply with this requirement.

(2) Except as provided in section 2.06(C)(3)(e).

B. The existing private act enabling legislation (Chapter 381 of the Private Acts of 1923, as amended) shall remain in full force and effect for education purposes, except as modified in this section.

Section 6.03. Removal of incumbents.

This charter shall not have the effect of removing the incumbent from any county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected.

Section 6.04. Constitutional officers.

The duties of the constitutional county officers as prescribed by the General Assembly shall not be diminished under this charter; provided, however, that such officers may be given additional duties under this charter.

Section 6.05. Municipalities.

Nothing in this charter shall be construed as interfering with the rights of municipalities within the county to retain their powers and functions and to provide municipal services in accordance with law, and further, ordinances enacted by the board of county commissioners under this charter shall not interfere with the local affairs of any municipality within the limit of Shelby County.

Section 6.06. Zoning.

This charter shall not alter or change zoning regulations effective in the county but the same shall continue until modified or changed by the county legislative body acting under authority granted in this charter.

Section 6.07. Annexation.

Nothing in this charter shall be construed as interfering with the rights of municipalities within the county to retain their powers and functions relative to annexation, as provided by state law.

Section 6.08. Incorporation.

Nothing in this charter shall be construed as interfering with the rights of citizens within the county to retain their powers and functions relative to incorporation, as provided by state law.

Section 6.09. Civil service.

No classified person defined in the civil service law shall be removed from[,] or discriminated against with respect to, any county position or appointive county administrative office because of race, creed, color, sex, national origin or political opinions or affiliations. The maintenance and administration of an effective civil service system shall be in accordance with Chapter 110 of the Private Acts of 1971, as amended, until the effective date of this charter, and all existing rules and regulations promulgated there under. After the effective date of this charter, the terms and provisions of that Act may be amended by ordinance, not contrary to law, provided that nothing in this section or in the charter shall impair or diminish the rights and privileges of the existing employees under civil service.

Section 6.10. Appointments and promotions.

No person who seeks appointment or promotion with respect to any county position or appointive county administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

Section 6.11. Existing rights and liabilities.

A. Nothing in the provisions of this charter shall be construed to abolish, limit, or abrogate any rights, privileges, duties, or liabilities created by contract with the county prior to the adoption of this charter.

B. Nothing in the provisions of this charter shall be construed to abolish, limit or abrogate any rights for or against the county existing prior to the adoption of this charter.

ARTICLE VII.

TRANSITION PROVISIONS

Section 7.01. Repeal of contrary laws.

This charter shall occupy, as far as the Constitution of the State of Tennessee permits, the entire field of self-government for Shelby County, and all laws relating to or affecting this county or its agencies, officials or employees, and all county private acts, public acts of local application, ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent with or interfere with the effective operation of this charter or of ordinances or resolutions adopted by the board of county commissioners under the provisions of this charter.

Section 7.02. Referendum.

This charter shall be submitted to the vote of the qualified electors of Shelby County, Tennessee, at an election which shall be held on August 2, 1984. The election shall be conducted by the offices and officers charged with conducting elections in the county. The ballots used in the election shall have printed on them a brief summary of the proposed charter as required by T.C.A. § 2-5-208(5). The ballots shall be prepared so as to provide a choice for voters as follows:

For a charter form of county government _____.

Against a charter form of county government _____.

Section 7.03. Effective date.

This charter shall become effective September 1, 1986, and shall be effective prior thereto to the extent necessary to permit elections to be held as otherwise provided herein during the year 1986. The state laws relating to nominations and elections shall apply to the nomination and election of all officers required to be elected under this charter commencing with the primary and general elections of the year 1986.

Section 7.04. Restructure act.

All provisions of Chapter 260 of the Private Acts of 1974 (the Restructure Act) which are not inconsistent with the terms of this charter, including all purchasing procedures, shall remain in full force and effect after the effective date of this charter until and unless they are amended, deleted, or otherwise changed by ordinance of the board of county commissioners. All divisions and departments of county government set forth in Chapter 260, Private Acts of 1974, shall remain in existence until and unless changed by the county commission.

Section 7.05. Delivery of documents.

The head of a department or office or an agency or commission, the functions, powers and duties whereof are assigned and transferred by this charter or by ordinance pursuant to this charter, shall deliver to the department to which such assignment and transfer is made, all contracts, books, maps, plans, papers, records and property of whatever description within the jurisdiction or under the control of that person or entity pertaining to or used in connection with the exercise or performance of the functions, powers and duties so assigned and transferred; and the head of the department to which such assignment and transfer is made shall be authorized to take possession thereof.

Section 7.06. Resolutions and regulations.

All resolutions, orders, regulations and directives of the board of county commissioners and all other county officers and offices in full force at the time this charter takes effect, to the extent they are not inconsistent with the provisions of this charter, shall remain and be in force and effect until altered, modified or repealed in accordance with this charter.

Section 7.07. Pending matters.

All matters pending before or under consideration by the board of county commissioners at the time this charter takes effect, to the extent they are not inconsistent with the provisions of this charter, may be acted upon and disposed of as if they had originated and had been introduced under this charter.

Section 7.08. Judicial proceedings.

All judicial proceedings of any kind or character, and all condemnation proceedings for the taking or damaging of private property for public use, and all proceedings to incur debt and issue bonds, begun or pending at the time this charter takes effect, all contracts for the doing of any kind of public work, not completed and performed at the time this charter takes effect, and all contracts or bids for the purchase or sale of property entered into prior to the time this charter takes effect but not consummated at such time shall in no way be affected by the adoption of this charter but the same may be completed in every respect as nearly as may be in accordance with the provisions of this charter.

Section 7.09. Rights and obligations.

All rights of action, contracts, obligations, titles, fines, penalties, forfeitures, and fees, accrued to or in favor of the county, or against the county, before this charter goes into effect, shall remain in existence in full force and effect as fully in every respect as if this charter had not taken effect. All recognizances, contracts and obligations lawfully entered into or executed by or to the county, and the lien thereof, all taxes due or owing

to the county, and the lien thereof, and all writs, prosecutions, actions and causes of action shall continue and remain unaffected by this charter.

Section 7.10. Elected and appointed officers.

All officers elected or appointed for definite terms under the provisions of this charter shall continue to hold office unless lawfully removed, until their respective successors are duly elected or appointed and qualified.

Section 7.11. Commission districts.

The districts from which the board of county commissioners shall be elected in August, 1986, shall be the same as the districts existing in August, 1982.

Section 7.12. Salaries.

A. The salary of the first board of county commissioners elected under this charter shall be as prescribed by state general law for boards of county commissioners; the expenses or any other form of remuneration provided for the first board of county commissioners elected shall be that as provided on June 15, 1984.

B. The compensation of the first county mayor elected under this charter shall be set by the board of county commissioners at their first meeting on or after September 1, 1986.

Section 7.13. Depositories.

The procedure for selecting depositories or custodial institutions for county funds in force as of January 1, 1986, shall remain in effect until and unless changed by ordinance of the board of county commissioners.

Section 7.14. Private acts.

All private acts of the General Assembly of Tennessee which affect Shelby County and which are in effect on September 1, 1986 shall, to the extent not inconsistent with this charter, be deemed ordinances of Shelby County, and shall remain in effect until and unless repealed or amended by the board of county commissioners.